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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,137	08/21/2003	Duane Powell	ABINITI.006A	1049
20995	7590	05/11/2006	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			BHAT, NINA	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			1764	

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/647,137

Applicant(s)

POWELL ET AL.

Examiner

N. Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8-21-2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claim 13 is objected to because of the following informalities: Applicant has recited "mixer 304", which apparently refers to a drawing element. Applicant need not refer to a drawing element where none of the other elements of the device are delineated. Appropriate correction is required.
2. Claims 1 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1 and 19 applicant has used "capable of language" which renders the claim indefinite. Applicant is suggested when drafting claims to positively recite the device, the components of the device and its function avoiding "capable of language" which renders the claims indefinite. Suitable correction is required.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
4. Claims rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ciampi et al. WO 02/06160.

Ciampi et al. teaches a device for the synthesis of ferrate which includes first and second container which hold starting materials, control means for metering the amount of reactants from the first and second holding chambers, which is delivered to a mixing

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chamber, mixing the ingredients, and a reaction chamber which reacts the mixed starting materials to product ferrate and means for removing the ferrate from the device to a site proximal to the site of use. Note Paragraph [0024]

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ciampi et al. WO 02/06160.

Ciampi et al. teach a device for the synthesis of ferrate which includes a first holding chamber; a second holding chamber; a mixing chamber controllably connected to the first and second holding chambers, a reaction chamber controllable connected to the mixing chamber into which the mixture is kept for a period of time; and an output opening in the reaction through which the reacted product can be transported to a proximal site of use. Note paragraph [0024]. Ciampi et al. teach an on-site generation ferrate system; the device is provides ferrate delivered to the site of use without

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substantial purification, packaging, shipping, transfer or preparation. Note paragraph [0045 -0046]. With respect to the reaction or production of ferrate the iron salt as described by Ciampi et al. are the same salts as described by applicant in claims 4-5 as is specifically taught in Paragraph [0061]. The oxidizing agent as claimed in claims 6-7 is taught by Ciampi et al. in Paragraph [0062]. The base used by applicant in the device as claimed in claims 8-9 is taught in Paragraph [0059]. With respect to claims 10-19, wherein applicant claims that the device includes a flowmeter, a measuring unit comprises a scale, the mixer including at least one eductor, the mixer is a mechanical, the reaction chamber comprises a reaction vessel and reaction this has been taught generically or specifically by Ciampi by providing control means from the first chamber and second chamber wherein the reactants are controlled or metered into the mixing chamber, there are control means between the mixer and the reaction chamber and the also control means for dispensing the ferrate at its end point. The mixer as claimed by applicant is the same type of mixer taught and used by Ciampi et al. the mixer being a mechanical agitating type of mixer.[Note paragraphs [0124] to [0129].

However Ciampi et al. does not specifically teach applicant's drain.

Ciampi et al. fairly teaches and suggests applicant's device for the synthesis of ferrate with the exception of the drain. Applicant has claimed that the drain is located at a site proximal to the site of use of the ferrate. The drain as claimed by applicant can be read given its broadest most reasonable interpretation as a drain for waste or a drain which is fluidly connected to the endpoint of use where the ferrate is to be used.

Therefore, it would have been obvious from one having ordinary skill in the art, to

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provide a fluid outlet which can be a drain which is located at a site proximate to the site of use of the ferrate, the drain as explained can be the conduit to which the ferrate is delivered to its end point of use, and thus to include the drain or conduit of fluid connection to end point of use as claimed by applicant has been fairly taught and suggested by Ciampi et al. and thus renders applicant's invention as a whole obvious to one having ordinary skill in the art at the time the inventions was made.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



N. Bhat  
Primary Examiner  
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